IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 110 OF 2007

Vasant Ganesh Kelkar ... Appellant

vs.

Smt. Aparna Jha and others ... Respondents

Mr. Bhavesh Parmar for the appellant.
Mr. S.B. Deshmukh for respondent Nos. 1 and 2.

CORAM: **SWATANTER KUMAR, C.J.** &
J.P. DEVADHAR, J.

DATE: **DECEMBER 05, 2007**.

P.C.

Learned counsel appearing for the appellant vehemently argued that the original will dated 28th August, 1987, on which the entire claim of respondent in the present appeal was founded was never produced before the Court. Several documents annexed to the writ petition would show that when the appellant applied for a certified copy of the Will in question, a remark was recorded by the Registrar stating that the original will was never submitted to the office of the Registrar. On this premise, it is submitted that there was a legal error in the order passed by the Court of competent jurisdiction. The review application

was dismissed for default and an application for restoration filed was also dismissed. The appellant could not be rendered remediless and as such the writ petition before this Court being Civil Writ Petition No. 2447 of 2006 was maintainable and ought to have been allowed by the learned single Judge.

2. We are not desirous of discussing the merit or otherwise of the contentions raised before us. It was open to the appellant to take appropriate legal remedy as available to him in law against the order dated 10th December, 1998 or any other order passed subsequent thereto.

3. At this stage, the learned counsel appearing for the appellant wishes to withdraw this appeal with liberty to take such steps as are permissible to him in accordance with law against those orders. We may notice that the appellant is present in person. The appeal is disposed of as withdrawn with liberty as prayed for.

CHIEF JUSTICE

J.P. DEVADHAR, J.